

Kimberly
Kevin said this
should not be against
Dr. Cumba-Quiles
I started it as
a complaint #48585
I asked Cheryl Malone
to delete it. Would you
check with her. Thanks
de

PETER VERNIERO
ATTORNEY GENERAL OF NEW JERSEY
Division of Law, 5th Floor
124 Halsey Street
P.O. Box 45029
Newark, New Jersey 07101
Tel: (973) 648-3696

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By: Patricia DeCotiis
Deputy Attorney General

STATE OF NEW JERSEY
DEPARTMENT OF LAW & PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS
STATE BOARD OF DENTISTRY

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|---------------------------------|---|-----------------------|
| DENTISTS FOR QUALITY CARE, INC. |) | |
| AND JOSE A. CUMBA, D.M.D. |) | |
| |) | Administrative Action |
| v. |) | |
| |) | |
| NEW JERSEY STATE BOARD |) | ORDER |
| OF DENTISTRY |) | |
| _____ |) | |

CERTIFIED TRUE COPY

This matter was opened to the New Jersey Board of Dentistry ("the Board") upon a motion by Dentists for Quality Care, Inc. and Jose A. Cumba, D.M.D. ("appellants") to settle the record on appeal in this matter. Appellants are challenging the validity of N.J.A.C. 13:30-8.22 adopted by the Board on December 2, 1998 and effective March 1, 1999 regarding the validity of diagnostic tests for traumatically induced temporomandibular dysfunction.

The Board filed a Statement of Items Comprising the Record on Appeal on July 15, 1999. Appellants argued in their motion to settle the record filed on July 30, 1999 that certain items were omitted from the statement which were maintained in the Board files (appellants' examined the Board files in this matter on July 28, 1999), and certain items should be deleted from the Board's statement as they were not found in the Board files in this matter.

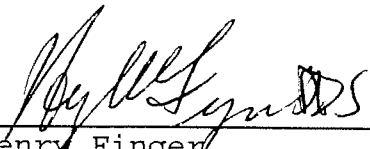
The promulgation of the regulation at issue was the subject of extensive public comment and consequently, Board discussion and analysis, as can be seen from the rule adoption published in the New Jersey Register. The Statement of Items Comprising the Record on Appeal in this matter consisted of approximately several hundred items. Appellants sought to add thirty-three (33) documents to the list and delete merely twelve (12).

The Board considered Appellants motion and supporting papers and Deputy Attorney General Nancy Costello Miller's reply papers and scheduled the matter for oral argument on October 6, 1999. By that date, the parties had agreed upon either the omission or inclusion of many of the items in dispute. All that remained in dispute was a list of twelve items identified in a document provided by appellants known as Exhibit F which appellant claimed should be deleted by the Board from the Statement of Items because they were not physically located in the Board file cabinet (see "exhibit F" attached). With respect to these twelve items, numbers 1 and 8-11 were sent to appellants on August 27, 1999 by DAG Miller. Subsequently, on October 1, 1999, DAG Miller provided appellants with numbers 2, 4, and 12, and advised them that number 3 was duplicative of number 8 and numbers 5-7 would be deleted as requested because she was unable to obtain copies. Despite having been provided with copies of the items in question, appellants continued to argue that those very items should be deleted from the Statement of Items because they were not in the Board files on July 28, 1999.

The Board having reviewed and considered all papers submitted by the parties in this matter, and having heard oral argument, and for good cause shown,

HEREBY FINDS AND ORDERS ON THIS 17th DAY OF NOVEMBER, 1999 THAT:

The Statement of Items Comprising the Record on Appeal shall contain items 1,2,3,4,9,10,11, and 12 contained in exhibit F attached hereto. The Board finds the inclusion of these documents necessary because they were, in fact, considered by this Board in the development and promulgation of N.J.A.C. 13:30-8.22. The Board also finds that there has been no harm to appellants in this matter based on their inability to view these documents on July 28, 1999. Appellants argue that individuals wishing to comment on this regulation subsequent to its proposal would not have had the benefit of reviewing these documents in preparation their comments. However, appellants made no effort to review any of the several hundred documents considered by the Board prior to submitting their comments. Finally, the inclusion of these documents will give appellants full and fair opportunity to argue their position on appeal with respect to their challenge of the validity of the regulation.



Henry Finger
Board President

Exhibit F
APPELLANTS' LIST OF ITEMS TO BE DELETED FROM THE SOI
AS NOT APPEARING IN THE BOARD'S FILES

1. Book Review: "New Concepts in Craniomandibular and Chronic Pain Management", JADA, (March 1998) (84)¹.
2. Temporomandibular Disorders (Charles McNeill, ed., 1993) (86).
3. Jeffrey Okeson, D.M.D., Oral Facial Pain (1993) (87).
4. Green, Mohl, McNeill, "Temporomandibular Disorders and Science" (88).
5. Nickerson, et al., (untitled article), Journal of Craniomandibular Practice, (January 1996) (90).
6. Mohl, McCall, Lund, "Mandibular Movement in Diagnosis of TMD", Journal of Prosthetic Dentistry, (1990) (91).
7. Nickerson, (untitled article), Oral Maxillary Facial Surgery Clinics of North America, (1989) (92).
8. Orofacial Pain, "Guidelines for Assessment, Diagnosis & Management: The American Academy of Orofacial Pain", (Jeffrey P. Okeson, D.M.D., ed., Quintessence Publishing Co., Inc., undated) (94).
9. Oral and Maxillofacial Surgery Clinics of North America, "Medical Management of Temporomandibular Disorders", Vol. 7, No. 1, February 1995; "An Evaluation of Unconventional Methods of Diagnosing and Treating Temporomandibular Disorders", (undated) (95).
10. Jeffrey P. Okeson, D.M.D., "The Clinical Management of Temporomandibular Disorders", Lecture Notes for the Department of Dentistry, JFK Medical Center, Edison, New Jersey, (November 11, 1998) (96).
11. Neuroscience Group Statement.
12. J. P. Lund, C. G., Wildner, J. S. Feine, "Validity of Diagnostic & Monitoring Tests Used for Temporomandibular Disorders", Journal of Orofacial Pain Review, (undated) (138).

¹ Numbers in the parantheses refer to the numbered paragraphs in Respondent's SOI.